IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.81771 M OF 2006

DATE OF DECISION: SEPTEMBER 19, 2007

Amardeep Singh

.....Petitioner

VERSUS

State of Haryana and others

....Respondents

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Ms. Nirmaljit Kaur, Advocate,
for the petitioner.

Mr. S. K. Hooda, Sr.DAG, Haryana,
for the State.

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RANJIT SINGH, J.

Petitioner seeks quashing of the order dated 25.11.2006 passed by Sessions Judge, Kurukshetra, and order dated 21.9.2006 passed by the Presiding Officer, Special Environment Court, Kurukshetra, vide which the application filed by the petitioner for release of his Maruti car and tractor trolley on sapurdari is declined. The petitioner stands accused of offences under Sections 9, 39 and 51 of Wild Life Protection Act, 1972 (hereinafter referred to as “the Act”). The allegation is that the vehicles in question were seized when dead bodies of Nilgai and Grey Partridge were found in tractor trolley and Maruti Car. Accordingly, these vehicles were seized in exercise of powers under Section 50-c of the Act. The petitioner moved an application for release of the

said vehicles on sapurdari before the Presiding Officer, Special Environment Court, Kurukshetra. This application was dismissed on 21.9.2006 (Annexure P-2). The petitioner impugned the said order by filing a revision petition before the Sessions Judge, Kurukshetra, who, vide his order dated 25.11.2006 (Annexure P-3) dismissed the revision petition. Both these orders are under challenge in the present petition.

Notice was issued to the respondents. Reply has been filed. Making reference to the provisions of Section 50 (c) and Section 39 (d) of the Act, it is stated that vehicle, vessel, weapon, trap or tool used for committing an offence under the Act and seized under the provisions of the Act shall be the property of the State Government. Accordingly, prayer for release of the vehicles on sapurdari is stoutly opposed.

Learned counsel appearing for the petitioner, however, would mainly urge that the vehicle, weapon, trap etc. would become property of the State only upon conviction of the person and hence, there is no justification to assume that conviction will result in this case to decline the release of the vehicle on sapurdari during the pendency of the case. The vehicles like tractor, as per the counsel, are required for use by the petitioner for earning his livelihood. On the other hand, learned counsel for the State would oppose this prayer mainly by relying upon Section 39 (d) of the Act vide which such property seized under the Act, shall be the property of the State and hence, it can not be ordered to be released on sapurdari.

In support of her submission, learned counsel for the petitioner has referred to the Full Bench decision of Madhya Pradesh

High Court in the case of ***Madhukar Rao s/o Malik Rao Vs. State of M.P. And others,*** 2000 (2) RCR (Criminal) 844. The counsel would also rely upon judgment passed by Kerala High Court in the case of ***Mathew Vs. The Range Officer, Chedelath Range Officer,*** 2004 Cri.L.J. 3961 and that of Orissa High Court in ***Baikuntha Bihari Mohapatra Vs. State of Orissa,*** 2001 Cri.L.J. 4151 besides taking support from the judgment of the Supreme Court in the case of ***Indian Handicrafts Emporium and others Vs. Union of India and others,*** AIR 2003 Supreme Court 3240. On the other hand, the State counsel would refer to an order passed by this Court in Criminal Revision No.493 of 2000 (***State of Haryana Vs. Abid and another)*** on 20.3.2001, whereby the direction given by the Sessions Court for release of the vehicle on sapurdari was reversed by this Court.

The point in issue was directly under consideration in the case of Madhukar Rao (supra) and Full Bench of Madhya Pradesh High Court while up-holding the power of the Magistrate to release such a vehicle etc. on sapurdari, over-ruled an earlier decisions, where contrary view was taken. In this case, State has placed strong reliance on clause (d) of sub-section (1) of Section 39 of the Act as can be noticed from Madhukar Rao's case (supra). Negating this contention, the Full Bench observed that if this interpretation is accepted, then property mentioned therein, including a vehicle seized merely on accusation or suspicion would become property of the State and that would be the result even though in the trial ultimately the Magistrate may find that no offence was committed and may

acquit the accused. In this background the Court held that:-

> "In our considered opinion the property seized under Section 50 of the Act from an alleged offender cannot become property of the State under Clause (d) of Section 39(1) unless there is a trial and a finding reached by the competent Court that the property was used for committing an offence under the Act. If the seizure of a property was enough to to declare it as the property of the Government, there was no necessity to provide under sub-section (2) of Section 51 that on proof of commission of the offence, the properties including vehicle, vessel, or weapon used in the commission of the offence would be forfeited to the State Government....."

The Scheme of the Act, as would emerge from analyzing various provisions, is to the effect that the property including the vessel etc. can be seized on accusation on commission of offence and on proof of guilty, the property seized from an accused and used in the commission of offence is liable to forfeiture to the State. This view taken by the Full Bench would also find echoes in the case decided by Hon'ble Supreme Court in the case Indian Handicrafts' case (supra). While dealing with the manner in which the property would vest in the Government, the Hon'ble Supreme Court observed that merely on being found in possession of any article would not mean that one has committed an offence and as such, would fall within the purview of Section 39(a)(1) of the Act as a result whereof the same could vest in the State. The Court further observed that

"..... Before a person is convicted a Court has to arrive at the finding that the accused has committed an offence wherefor a full fledged criminal trial would be necessary. In absence of such criminal trial and offence having been found committed, Section 39 may not have any application. In that view of the matter, it is evident that the properties do not stand vested in the Government in terms thereof." It is, thus, held in no uncertain terms that property would come to vest in the State only after trial and conviction of the concerned person and prior thereto, this Section may not have any application. Similar is the view taken by the Division Bench of Kerala High Court in the case of Mathew (supra). The vehicle etc., thus, does not become a property of the Government moment it is seized but it would be so when it is found by the competent Court that the offence is committed. Accordingly, the Division Bench went on to observe that it is not correct to say that interim custody of the vehicle can not be given to the owner of the vehicle by virtue of what is said in Section 39(1)(d) of the Act and that if the petitioner is owner of the vehicle, interim custody of the same can be given to him. Similar is the view taken by the Orissa High Court in Baikuntha Bihara's case (supra). It was held that when the property seized is reported to the Magistrate and is produced before him, he would have jurisdiction to entertain an application for release thereof under Section 457 Cr.P.C. In this case also, it is held that the seized property would become the property of the State Government only if competent Courrt finds that the vehicle was in fact involved in the commission of offence. Mere allegation would not result in vesting of the vehicle in the State Government and accordingly, it was held that the courts are

empowered to order release of the vehicle during the pendency of the case. Single Bench of this Court in Abid's case (supra) appears to have confined itself to the facts of the case while interfering in the order passed by the Sessions Court. In this case, the Additional Sessions Judge had directed release of truck to its owner by holding that there was no provision that any proceeding had been conducted for the confiscation of the truck by the competent authority. This Court found that the reasons assigned were not sufficient to release the truck on sapurdari as the provisions of the Act are very stringent. Some of the judgments cited before this Court in this case were not found to be applicable as these were either under the Essential Commodities Act or Narcotic Drugs and Psychotropic Substances Act. No doubt, the provisions of the Act, especially Section 39 would come into operation for making the seized property to be the property of the State but as noticed above, such a situation will arise only on adjudication by a court of competent jurisdiction in regard to the guilt or otherwise of the person accused of an offence under the Act. To my mind, the ratio of law that would emerge from the case of Abid's case (supra) would confine itself to the facts of that case and apparently would not lay down any binding ratio to the effect that the vehicle etc. involved in the commission of offence under the Act can not be released on sapurdari during the pendency of the case. This issue has directly been addressed by the different High Courts in the cases referred to above, which went on to hold that such vehicles, articles etc. would become property of the State only after conviction of the person concerned and that these can be released on sapurdari till the conviction is so recorded. This aspect can no more appear to

be in any dispute in view of the law laid down by the Hon'ble Supreme Court in Indian Handicrafts' case (supra) where it is held that Section 39 may not have any application in the absence of criminal trial and the offence having been found committed. I am, thus, inclined, to take a view that there is no restriction on the powers of the Courts to release vehicle and other items seized upon commission of offence under the Act on superdari. However, order of release of vehicle etc. on superdari would depend upon facts and circumstances in each case and it would be for the Court to release any property etc. on sapurdari during the pendency of the case or not.

Coming to the facts of this case, the vehicles seized in this case, release of which is sought, are tractor trolley Farm Track and Maruti car. The case set up by the petitioner is that he would require tractor trolley for his use for earning his livelihood and Maruti car for his use. It is also seen that initially the police had arrested the petitioner and other persons accompanying him and the Inspector Wild Life was called subsequently. It is yet to be seen if they have committed any offence under the Act and they are required to be presumed to be innocent till contrary is established. Since one of the vehicle is needed by the petitioner for his use to earn livelihood, in my view, it would be proper to release the vehicle on sapurdari during the pendency of the case.

The petitioner accordingly would appear before the Magistrate for seeking release of the vehicle on sapurdari to him. On his doing so, the Magistrate would release the vehicles on supardari to the petitioner on conditions considered appropriate by him. In

addition, the petitioner may be required to give an undertaking that he would keep the vehicle in the same condition besides requiring him to furnish adequate surety of the amount equal to the value of the vehicles as on date.

The present petition is accordingly disposed of.

September 19, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**